

**LAWRENCE B. LOCKWOOD, Plaintiff v. AMERICAN AIRLINES, INC.,
Defendant.**

Civil No. 91-1640-E(CM)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

1993 U.S. Dist. LEXIS 19768; 29 U.S.P.Q.2D (BNA) 1637

September 21, 1993, Decided

September 21, 1993, Filed

JUDGES:
[*1] ENRIGHT

OPINIONBY:
WILLIAM B. ENRIGHT

OPINION:

MEMORANDUM DECISION AND ORDER

BACKGROUND

On July 30, 1993, the court entered a Memorandum Decision and Order granting defendant's motion for summary judgment on non-infringement grounds. On August 6, 1993, the clerk's office inadvertently entered judgment in this case.

Plaintiff now moves this court to clarify any uncertainty surrounding the judgment entered by the clerk's office by entering a final judgment in this case pursuant to Rule 54(b) as to plaintiff's claim of patent infringement. In addition, plaintiff asks that the court expressly determine that there is no just reason for delaying an appeal from the final judgment. The patent infringement claim is the only claim asserted in the complaint.

Defendant has asserted counterclaims seeking attorneys' fees and a declaration that the patents in suit are invalid. It argues that the invalidity counterclaim is crucial to the continuing conduct of defendant's computer reservation business. Thus, it argues that the court should decide the validity issue, despite the non-infringement ruling, so that defendant has the possibility of becoming free from future litigation by Lockwood involving

SABREvision. Defendant [*2] also argues that the court should deny plaintiff's motion because it is not likely to be successful and would unreasonably delay resolution of this case for more than a year.

DISCUSSION

Fed. R. Civ. P. 54(b) gives the court discretion to direct the entry of a final judgment as to one or more of the claims upon the express determination that there is no just reason for delay. Judgments under Rule 54(b) must be reserved for the unusual case in which the costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket are outbalanced by pressing needs of the litigants for an early and separate judgment. *Frank Briscoe Co. v. Morrison-Knudsen Co.*, 776 F.2d 1414, 1416 (9th Cir. 1985).

Lockwood argues that Rule 54(b) relief is warranted because the judgment: 1) finally determined plaintiff's claim; and 2) the infringement issue is separate from the other claims for relief. See *W.L. Gore v. Intern Medical Prosthetics Research*, 975 F.2d 858 (Fed. Cir. 1992).

Additionally, plaintiff argues that the most efficient course of action for this court is to enter a final judgment on the infringement [*3] issue. However, all of plaintiff's arguments are effectively disposed of by a recent decision by the Supreme Court. See *Cardinal Chemical Co. v. Morton International, Inc.*, 124 L. Ed. 2d 1, 113 S. Ct. 1967 (1993).

First, plaintiff argues that the infringement issue finally determined plaintiff's claim. It cites *Gore* for the proposition that once the district court decides the infringement issue, it need not decide the invalidity issue. *Id.* However, the Supreme Court has recently

09533906-021202

indicated its preference that district courts rule on both the invalidity and infringement issues, even when non-infringement is found. See *Cardinal Chemical Co. v. Morton International, Inc.*, 124 L. Ed. 2d 1, 113 S. Ct. 1967 (1993).

Second, Lockwood argues that the infringement claim is separate from the validity issue because they involve different factual and legal issues. While this argument is technically true, it was given little consideration by the Supreme Court in *Cardinal*, where it indicated that district courts should decide both the infringement and validity questions. See *Id.*

Finally, Lockwood [*4] argues that it would be more efficient for this court to enter a final judgment and allow an immediate appeal because if the non-infringement ruling is upheld there will be no reason to try the validity issue. However, in *Cardinal*, the Supreme Court noted the importance to the public at large of deciding patent validity issues. See *Id.* Thus, even if the non-infringement ruling were upheld, this court would still need to address the validity issue.

This court agrees with defendant that Lockwood has presented no evidence or argument which suggests that this is an unusual case warranting relief under Rule 54(b). The arguments made by plaintiff are the same arguments that could be made in every patent case. In light of the direction provided by the Supreme Court in *Cardinal Chemical*, this court finds that granting plaintiff's Rule 54(b) motion would only unnecessarily delay resolution of this case. Thus, plaintiff's Rule 54(b) motion is denied and this case will continue in the normal course of events.

CONCLUSION

Upon due consideration of the parties' memoranda and exhibits, the arguments advanced at hearing, and for the reasons set forth above, the court hereby denies [*5] plaintiff's Rule 54(b) motion. The clerk's office is directed to vacate the judgment issued in this case.

DATED: September 21, 1993.

WILLIAM B. ENRIGHT, Judge

United States District Court

09533906-021202